

REMARKS

INTRODUCTION:

In accordance with the foregoing, no claims have been canceled, amended, or added. Claims 1-20 are pending and under consideration. Reconsideration is respectfully requested.

REJECTION UNDER 35 U.S.C. §102:

In the Office Action, at page 2, claims 1-20 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,427,098 issued to Alverson et al. This rejection is traversed and reconsideration is respectfully requested.

Claims 1 and 11 Patentably Distinguish Over Alverson

Regarding claims 1 and 11, the Applicants respectfully traverse the rejection because Alverson fails to teach or suggest:

storage means for storing the control programs created in the NC program format in a way that distinguishes between a program to be executed periodically and a program to be executed according to an execution command (Claim 1); and

a storage to store the control programs created in the NC program format in a way that distinguishes between a program to be executed periodically and a program to be executed according to an execution command (Claim 11).

The Applicants respectfully submit that Alverson fails to teach or suggest a storage means (or a storage) that stores the control programs in a way that distinguishes between a program to be executed periodically and a program to be executed accordingly to an execution command.

The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art."

Phillips v. AWH Corp., 415 F.3d 1303, ___ (Fed. Cir. 2005) (en banc) (citing *In re Am. Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)).

The specification makes no mention of distinguishing between a program to be executed periodically and a program to be executed according to an execution command based exclusively upon a storage location. Accordingly, the proposed interpretation of the claim language appearing on page 3 of the Office Action is unreasonable in light of the specification.

A new rationale for this rejection appears on page 2 of the Office Action. The new rationale is based on an inherency theory. Specifically, the Examiner states:

Alverson establishes that the programs are stored in a storage means (col. 5, lines 20-26) and then discloses being able to execute these programs (col. 5, lines 40-63). Therefore, the Office interprets Alverson to implicitly disclose storing both types of programs in a way that a distinction is possible between them. If this were not the case, then Alverson's processor would not be able to successfully call the correct program when it periodically executes a program. A distinction must inherently exist that lets the processor know this is a program that it must execute periodically.

The Applicants respectfully submit that the Examiner has failed to establish that Alverson teaches or suggests periodically executed programs created the NC program format and command executed programs created in the NC program format as claimed. Accordingly, Alverson cannot be relied upon for implicitly teaching the storage (or storage means) as recited.

Accordingly, because Alverson fails to teach or suggest all of the features of claims 1 and 11, these claims are allowable over Alverson. Thus, withdrawal of the §102(b) rejection is respectfully requested.

Claims 2-10 and 12-20 Depend From Patentably Distinct Claims

Regarding the rejection of claims 2-10 and 12-20, these claims depend directly or indirectly on one of independent claims 1 or 11, and are therefore believed to be allowable for at least the reasons noted above.

CONCLUSION:

In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot. And further, that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

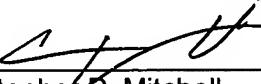
If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney for a telephone interview to discuss resolution of such issues.

If there are any underpayments or overpayments of fees associated with the filing of this Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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Date: January 9, 2006

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